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May 14, 2008

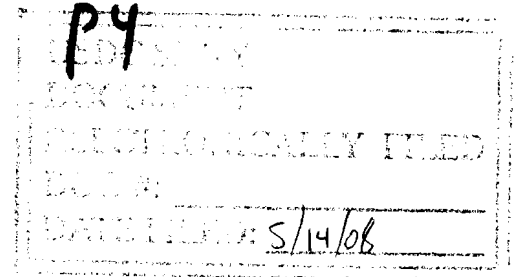
By Hand

Hon. Richard M. Berman
United States District Court Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

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MEMO ENDORSED

Re: Prime Time Toys, Ltd.
v. Manley Toy Direct, LLC, et al.
08-CV-2335 (RMB)
Our File: 69281/92



Dear Judge Berman:

We represent Plaintiff Prime Time Toys, Ltd. ("Prime Time"). This letter is in response to the letter dated May 6, 2008 from counsel for Manley Toy Direct, LLC advising that it may wish to seek summary judgment, and your Honor's memo endorsement requiring our response by noon on May 14, 2008.

The present action charges Defendants Manley Toy Direct, LLC ("Manley Toy Direct"), Manley Toy Quest, Inc. ("Manley Toy Quest"), and J.C. Penney Corporation ("Penney") *inter alia* with infringement of Prime Time's U.S. Patent No. 7,281,642 (the "642 Patent") and infringement of the Prime Time trademark SPLASH BOMBS for water toys, which is the subject of U.S. Trademark Registration No. 2,176,591.

As explained more fully below, Prime Time is trying to seek redress from the appropriate party. Prime Time believes that Manley Toy Direct and Manley Toy Quest are alter egos. Prime Time also believes that Manley Toy Quest is unfairly seeking to avoid being served. Several attempts to serve Manley Toy Quest at its place of business in Los Angeles were unsuccessful.

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As referenced in the Complaint, in May of 2007 Prime Time first placed SLB, a predecessor of Manley Toy Quest, on notice of infringement of the SPLASH BOMB trademark. (See Complaint Paras. 45, 46.) SLB responded by commencing a declaratory judgment suit against Prime Time in the Central District of California. Prime Time counterclaimed and shortly thereafter SLB assigned its assets for the benefit of its creditors.. Thereafter, the action was dismissed without prejudice. The product complained about in the prior lawsuit is the same as Complaint Exhibit F. Thus, there is a history of Manley Toy Quest seeking to avoid being held accountable. Prime Time is concerned that the threatened motion is more of the same.

Prior to the commencement of this suit, Prime Time purchased a "Bonzai Hydro Cannon" water toy which is alleged to infringe the '642 Patent (see Ex. D. to the Complaint). The product is identified as coming from "Toy Quest, a Division of Manley." The "Toy Quest" portion of the mark is marked with the ® symbol indicating that it is registered in the U.S. Patent and Trademark Office; however, a search of the Patent and Trademark Office database shows that there is no registration for such mark.

The Universal Product Code ("UPC") appearing on the accused Hydro Cannon product is 0 26753 42577 8. According to the UPC database, this UPC code "has no record in the database." The accused Spiderman SPLASH BOMB toy (Ex. F to the Complaint) is marked with UPC code 0 26753 32081 3. There is also no record of this UPC code in the UPC database. However, the prefix of the UPC code (here 26753), which usually identifies the manufacturer, is used on several other products. Included among the products bearing such prefix is the TEKNO PUPPY, a robotic puppy. This product is offered on Manley Toy Direct's web site (see Attachment A). However, the trademark registration for the mark TEKNO THE ROBOTIC PUPPY is owned by Manley Toy Quest. A number of other products identified on the UPC list having UPC numbers with the prefix 26573 appear on the Manley Toy Direct website (e.g., Virtual Speed Baseball, Plug N' Play sports games, Door Slammerz). The two entities appear to be closely related, if not the same.

Recently, both Manley Toy Direct and Manley Toy Quest have changed their names. Specifically, Manley Toy Quest has apparently started to use "Toy Quest, a Division of Manley" on its products as the sole identification of source. Likewise, Manley Toy Direct is now calling itself "Toy Network, a Division of Manley."

On the website of "Toy Quest, a Division of Manley," the "About Us" section uses the following designation (see Attachment B):

With over 30 years of experience, Toy Quest® is always one step ahead of the competition by constantly developing unique and innovative products that excite, entertain, and educate children.

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The website for Manley Toy Direct uses essentially the same description (see Attachment C):

Welcome to Toy Network, a division of Manley Toys! For more than 30 years, the Manley Toy family has continued to grow by staying one step ahead of the competition.

* * *

We constantly source and develop unique and innovative products that excite, entertain and educate children.

It would appear that the same person wrote both descriptions.

Manley Toy Direct is located in Indianola, Iowa and Manley Toy Quest is in Los Angeles, California; however, the customer service address for Manley Toy Quest is in Clive, Iowa (see Attachment D).

Based upon this brief discussion of the interrelationship between Manley Toy Direct and Manley Toy Quest, both being "divisions of Manley," the fact that both entities use the same prefix in UPC's on their products, both entities offer some of the same products on their websites, the respective websites use the same description of the two companies, and the customer service department of Manley Toy Quest, the California company, is located in Iowa less than 30 miles from Manley Toy Direct, we believe that there are sufficient material factual issues to preclude summary judgment. Prime Time believes that it is essential that Manley Toy Direct, now perhaps known as "Toy Network, a division of Manley Toys," be kept in this lawsuit to assure that Prime Time can be awarded the full relief it is entitled to in this action should Toy Direct turn out to be the proper party or the same party as Manley Toy Quest.

On a related matter, counsel for Manley Toy Direct also represents Penney in the present action. The accused "Bonzai Hydro Cannon" referred to in the Complaint as Exhibit D was purchased by Prime Time at a J.C. Penney store. Penney's counsel refuses to identify the source of this accused product absent a protective order making such information confidential. Since the identity of the source has a bearing on the present issue and is information that will be required in order to effectuate service on Manley Toy Quest or a different party, such information cannot be accepted under any terms which prevent its use by counsel.

In view of the above, it is respectfully requested that Manley Toy Direct be instructed at the Preliminary Case Conference not to file a motion for summary judgment

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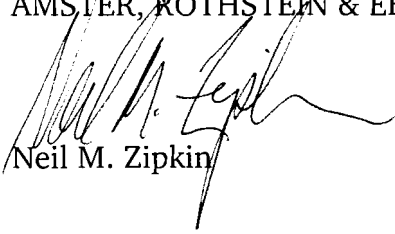
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and that counsel for Penney be directed to disclose the source of the accused products purchased by Penney, without restriction.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP


Neil M. Zipkin

NMZ/jns
Attachments

cc: Rod S. Berman, Esq. (via e-mail)
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Brian W. Kassell, Esq. (via e-mail)
Chester Rothstein, Esq. (via e-mail)

